

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISC.CIVIL APPLICATION NO. 278 OF 2016****Harshita Dinesh Gangwani****..... Applicant****VERSUS****Dinesh Sunder Gangwani****..... Respondent**

Ms.Nidhi Dotiya, i/b. Ms.Sonal Parab for the Applicant.

None for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 22nd NOVEMBER, 2016****P.C.**

Learned counsel appearing for the applicant states that the respondent has been served. Learned counsel appearing for the applicant states that the respondent has not claimed the service. The applicant has already filed affidavit of service.

2. Learned counsel appearing for the applicant has produced the original of the packet sent by the applicant to the respondent. The endorsement made by the Post Office indicates that the respondent has not claimed the said packet containing the papers and proceedings in the said matter.

3. By this miscellaneous civil application filed under section 24 of the Code of Civil Procedure, 1908 the applicant seeks transfer of the Case No.A-534 of 2016 filed by the respondent in the Family Court, Pune to any other court of competent jurisdiction at Mumbai.

4. The applicant was married to the respondent on 5th December, 2002. Out of the said wedlock, there are two daughters of the age 12 and 8 years respectively. Since last several years, the applicant has been staying with her parents at Mahim, Mumbai. It is the case of the applicant that due to the ill treatment by the respondent, the applicant was required to leave the matrimonial home and to shift to the parents' house. The applicant is unemployed. The children of the applicant are schooling at Mumbai. The parents of the applicants are not keeping good health. The applicant is totally dependent upon the parents.

5. The distance between Pune and Mumbai is more than 160 km. The applicant cannot accompany her two children for attending the proceedings at Pune. There are serious allegations made by the applicant about respondent's misbehaviour and alleged physical assault upon the applicant. The applicant apprehends the physical assault from respondent if she is required to attend the proceedings at Pune.

6. None appeared for the respondent. No affidavit in reply is filed.

7. Since the applicant has two children who are schooling who are totally dependent upon the applicant and the applicant is totally depending upon her parents, in my view the applicant has made out a case for transfer of the proceedings filed by the respondent.

8. Supreme Court as well as this court in catena of decisions has consistently taken a view that while considering an application filed under section 24 of the Code of Civil Procedure, 1908, convenience of the wife is required to be considered.

9. I, therefore, pass the following order :-

(a) Miscellaneous Civil Application No.278 of 2016 is made absolute in terms of prayer clause (a).

(b) The Family Court at Pune is directed to transmit the papers and proceedings of Case No.A-534 of 2016 to Family Court, Bandra expeditiously.

(c) The parties as well as the Family Court Pune and Family Court, Bandra to act on the authenticated copy of this order.

(d) Both the parties are directed to appear before the Family Court, Bandra, Mumbai on 9th January, 2017. No order as to costs.

(R.D.DHANUKA, J.)